

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

JIM RAFFERTY,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social
Security Administration,

Defendant.

CV-10-12-GF-SEH-RKS

**FINDINGS AND
RECOMMENDATIONS TO
DISMISS COMPLAINT**

Before the Court is Plaintiff Mr. Jim Rafferty's Amended Complaint. (C.D. 5.) Mr. Rafferty is proceeding in forma pauperis. (C.D. 3.) This Court has jurisdiction pursuant to 42 U.S.C. § 405(g).

I. Plaintiff's Amended Complaint

Because Mr. Rafferty is proceeding in forma

pauperis, the Court has a duty to screen his Amended Complaint. 28 U.S.C. § 1915(e)(2). The Amended Complaint shall be dismissed at any time if the Court determines: the allegation of poverty is untrue; or the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. Id.

Mr. Rafferty's Amended Complaint fails to state a claim, and must be dismissed. Mr. Rafferty seeks judicial intervention regarding an overpayment issue. Mr. Rafferty was instructed to amend his complaint to show a final ruling had been issued by the Commissioner. (C.D. 3.) He has not done so. While his Complaint states he has exhausted his administrative remedies, he also states he has requested a hearing, and no hearing date has been set.

Overpayment is an *initial* decision, which is subject to appeal and judicial review. 20 C.F.R. § 404.902 (emphasis added). Thus, until Mr. Rafferty has exhausted the remedies available from the Social

Security Administration, including a hearing and Appeals Council review, there is no *final* decision that this Court can review. 20 C.F.R. § 404.981; 42 U.S.C. § 405(g)(emphasis added). Nothing in Mr. Rafferty's Complaint shows there was a final ruling by the Social Security Administration.

Therefore, **IT IS HEREBY RECOMMENDED** that:

1. Mr. Rafferty's Amended Complaint be **DISMISSED without prejudice**.

DATED this 29th day of March, 2010.

/s/ Keith Strong

Keith Strong
U.S. Magistrate Judge